



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Christopher DeLacy, Esquire
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2099 Pennsylvania Ave., N.W., Ste. 100
Washington, DC 20006-6801

AUG 19 2009

RE: MUR 6054
1099 L.C. d/b/a Venice Nissan
Dodge

Dear Mr. DeLacy:

On August 26, 2008, the Federal Election Commission notified your client, 1099 L.C. d/b/a Venice Nissan Dodge, of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your client, the Commission, on June 23, 2009, found that there is reason to believe 1099 L.C. d/b/a Venice Nissan Dodge knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

Your client may submit any factual or legal materials that it believes are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

Please note that your client has a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

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If your client is interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that your client wishes the matter to be made public.

If you have any questions, please contact Jack Gould, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondent: 1099 L.C. d/b/a Venice Nissan Dodge

MUR 6054

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington, Melanie Sloan, Carlo A. Bell, and David J. Padilla. *See* 2 U.S.C. § 437g(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

The complaint alleges that employees of 1099 L.C. d/b/a Venice Nissan Dodge ("VND"), a car dealership in which Representative Vern G. Buchanan holds an ownership interest, were reimbursed with corporate funds for making contributions to Representative Buchanan's 2006 congressional campaign. The complaint also alleges that employees were coerced into making contributions to Representative Buchanan's campaign.

Attached to the complaint were sworn affidavits from two former VND employees, Carlo A. Bell (finance director) and David J. Padilla (finance manager). *See* Complaint, Exhibits A and D. Mr. Bell stated in his affidavit that his supervisor, Don Caldwell (VND's General Manager), told him and two other VND employees, Jack Prater (sales manager) and Jason A. Martin (finance manager), that they "needed to contribute to the campaign of Vern Buchanan." Affidavit of Carlo A. Bell ("Bell Aff.") ¶¶ 2, 3. According to Mr. Bell, "Mr. Caldwell was holding cash in his hand at the time and said that the company would reimburse us for our contributions. He (Caldwell) explained that the company would give us \$1,000 in cash in exchange for our writing \$1,000 checks to the Campaign." *Id.* ¶ 3.

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1 Mr. Bell stated that this did not seem right to him and he asked Mr. Caldwell if it was
2 legal. According to Mr. Bell, "Mr. Caldwell did not answer my question, instead asking me if I
3 was on the team or not." *Id.* ¶ 4. Mr. Bell stated that he was afraid he might lose his job if he
4 refused, so he replied that he was part of the team and agreed to write the check. *Id.* Mr. Bell
5 further stated that Mr. Caldwell then gave him, as well as Messrs. Prater and Martin, \$1,000 in
6 cash. *Id.* ¶ 5. Mr. Bell also stated that he later discovered that two other VND employees,
7 Marvin L. White (VND used ~~car~~ manager) and William F. Mullins (a VND salesman), also
8 received \$1,000 cash ~~reimbursements~~ when they agreed to write checks to the Buchanan
9 campaign. *Id.* ¶ 8. Messrs. Prater, Martin, White, and Mullins each wrote a check in the amount
10 of \$1,000 to Vern Buchanan for Congress ("VBFC") on September 16, 2005, and Mr. Bell wrote
11 his \$1,000 check to VBFC on September 17, 2005.¹

12 David J. Padilla stated in his sworn affidavit that he was informed by Brad Combs (VND
13 finance manager) that then-candidate Buchanan needed campaign contributions and that "anyone
14 who made a contribution would get his money back plus additional compensation." Affidavit of
15 David J. Padilla ("Padilla Aff.") ¶ 2. Mr. Padilla further stated Mr. Combs asked him "if I
16 wanted in on the deal," to which Mr. Padilla replied, "you have to be out of your mind." *Id.* ¶ 3.
17 Mr. Padilla stated that he told Mr. Combs that "accepting reimbursement for making a campaign
18 contribution is against the law." *Id.* According to Mr. Padilla, Mr. Combs also told him "all of
19 the managers were being asked to contribute and that many were planning to accept
20 reimbursements in exchange for contributions." *Id.* ¶ 4.

¹ VBFC reported receiving \$1,000 contributions from Messrs. Bell, Prater, Martin, White, and Mullins on September 28, 2005.

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1 Mr. Padilla further stated that Mr. Bell told him that he accepted reimbursement for
2 making a contribution to the Buchanan campaign and that he later discovered that several other
3 VND employees, including Jack Prater and Jason Martin, had been reimbursed for making
4 contributions to the Buchanan campaign. *Id.* ¶¶ 5, 6.

5 The Response to the complaint filed by VND and other parties ("VND Response")
6 contained identically-worded sworn affidavits by Jason A. Martin, Jack Prater, Marvin L. White,
7 and William F. Mullins, who are currently employed by VND. *See* VND Response, Exhibits A-
8 D. Each employee stated that they "made the donation of my own free will and was not
9 pressured, coerced or forced by anyone to make the donation." Each employee further stated,
10 "I was not reimbursed by anyone for making my contribution to the campaign of Vern
11 Buchanan."

12 Donald M. Caldwell, in his sworn affidavit submitted in response to the complaint,
13 admitted that he asked Carlo Bell, Jack Prater, and Jason Martin to contribute to the Buchanan
14 campaign, but denied that he coerced them into making a contribution. *See* Affidavit of
15 Donald M. Caldwell ("Caldwell Aff."), Exhibit A to Supplemental VND Response, dated
16 February 11, 2009. Mr. Caldwell also denied reimbursing Messrs. Bell, Prater, or Martin for
17 their contributions to the Buchanan campaign. *Id.*

18 Brad S. Combs also submitted a sworn affidavit in response to the complaint, in which he
19 stated that he "did not coerce, or attempt to coerce, David J. Padilla into making contributions to
20 the Buchanan campaign." *See* Affidavit of Brad S. Combs ("Combs Aff."), Exhibit B to
21 Christopher DeLacy letter dated February 11, 2009. Mr. Combs further stated that he "did not
22 reimburse, or attempt to reimburse, David J. Padilla for contributions to the Buchanan

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1 campaign." See Combs Aff. ¶¶ 4, 5. However, Mr. Combs did not refute Mr. Padilla's
2 statements that Mr. Combs told him: "Mr. Buchanan needed campaign contributions and that
3 anyone who made a contribution would get his money back plus additional compensation," and
4 asked him "if I wanted in on the deal." Affidavit of David J. Padilla ("Padilla Aff.") ¶¶ 2, 3.

5 In addition to the affidavits, the VND Response included a partial transcript of a televised
6 interview with Mr. Padilla, wherein Mr. Padilla stated that he was not asked to make political
7 campaign contributions to Buchanan, but he heard "that went on."² See VND Response, Exhibit
8 E. The VND Response asserts that Mr. Padilla's statement contradicts what he said in his
9 affidavit. VND Response at 2. However, Mr. Padilla may not have considered being asked if he
10 "wanted in on the deal" to serve as a straw donor and obtain "additional compensation," to be the
11 same as being asked to make a contribution, in which case he would spend \$1,000 of his own
12 money.

13 A DVD of the televised news story, which included Mr. Padilla's interview, was provided
14 with the VND Response as well. The news story discussed the complaint in this matter and
15 included a short video clip of an interview with Mr. Bell that apparently aired during a prior
16 broadcast. In that interview, Mr. Bell stated, "I was given \$1,000 in cash and told to write a
17 check for \$1,000 to his campaign fund." The news story also includes a short statement made by
18 Mr. Martin, who is VND General Manager Don Caldwell's nephew. Mr. Martin, who Mr. Bell
19 said was present at the meeting where they were told they would be reimbursed for making a
20 contribution to the Buchanan campaign, stated that he "didn't feel like anyone was pressured and
21 I specifically was not pressured to do anything like that."

² VBFC's disclosure reports do not show any contributions from Mr. Padilla.

1 VND was established in the State of Florida as a Limited Liability Company ("LLC") and
2 it has elected to be treated by the Internal Revenue Service as a partnership. Thus, VND is
3 considered a partnership under the Federal Election Campaign Act of 1971, as amended ("the
4 Act"). See 11 C.F.R. § 110.1(g). A partnership may make contributions to a candidate for
5 federal office. Such contributions may not exceed the amount specified in 2 U.S.C.
6 § 441a(a)(1)(A). During the 2006 election cycle, the contribution limit was \$2,100. The Act
7 also prohibits persons such as partnerships from making a contribution in the name of another
8 person. 2 U.S.C. § 441f.

9 In view of the seriousness and specificity of the complaint's allegations – contributions in
10 the name of another with an element of coercion – and the key witnesses' differing sworn
11 accounts of what transpired in connection with their contributions to the Buchanan campaign,
12 there is reason to investigate whether VND violated 2 U.S.C. § 441f by reimbursing Messrs.
13 Bell, Martin, Mullins, Prater, and White's \$1,000 contributions to VBFC. Because VND is taxed
14 as a partnership, it appears that VND may have violated 2 U.S.C. § 441a(a) by making
15 contributions to the VBFC in excess of the allowable limit.³

16 The Act also addresses violations that are knowing and willful. See 2 U.S.C.
17 § 437g(a)(5)(B). The fact that VND may have reimbursed employees who made contributions to
18 VBFC raises the question of whether the violations were knowing and willful.

³ A contribution by a partnership is attributed to the partnership and to each partner. See 11 C.F.R. § 110.1(e). We have no information at this time regarding the members of VND who may be treated as partners.

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1 The phrase "knowing and willful" indicates that "acts were committed with full
2 knowledge of all the relevant facts and a recognition that the action is prohibited by law...." 122
3 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97-98, 101-02
4 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such
5 reckless disregard of the consequences as to be equivalent to a knowing, conscious, and
6 deliberate flouting of the Act," but concluding on the facts before it that this standard was not
7 met); *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983) (*same*). In
8 making contributions to VBFC through other persons, VND would be disguising itself as the
9 source of the contributions, and giving more money to VFBC than was permissible. These facts
10 strongly suggest an attempt to circumvent the law. An inference of knowing and willful conduct
11 may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United*
12 *States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990) (defendants were active in deciding how
13 to reimburse employees with corporate funds for their contributions). Accordingly, the available
14 information indicates that there is reason to believe that VNJ knowingly and willfully violated
15 the Act.

16 **III. CONCLUSION**

17 Based on the foregoing, the Commission finds there is reason to believe that 1099 L.C.
18 d/b/a Venice Nissan Dodge knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a).

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